U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

MAR 25 2005

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mai Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be remanded for further action and consideration.

The petitioner is a healthcare institution. It seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree or an alien of exceptional ability. According to the Form I-140 petition and Form ETA-750B, the petitioner seeks to employ the beneficiary as an "Endocrinologist." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States because the beneficiary will practice medicine and conduct research in a "medically underserved area." The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree or an alien of exceptional ability, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.--
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if--
> > >
> > > > (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
> > > >
> > > > (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

In support of the petition, the petitioner provided two letters, one from counsel (dated December 2, 2002) and one from [redacted] Executive Director, Community Health Center, [redacted] dated November 22, 2002), requesting "a 'National Interest' Waiver Pursuant to Section 203(b)(2)(B)(ii)" of the Act. Counsel states that the beneficiary will "serve as a [sic] Endocrinologist at La Clinica on a permanent and full-time basis."

On October 22, 2003, the director issued a notice requesting evidence that the beneficiary had met the guidelines published in the precedent decision *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Comm. 1998). The director's notice did not properly address the petitioner's request for a national interest waiver pursuant to section 203(b)(2)(B)(ii) of the Act. Rather than issuing a request for evidence establishing that the beneficiary had met the regulatory requirements for alien physicians at 8 C.F.R. § 204.12, the director instead requested documentation showing that the beneficiary had met the three-prong test established by *Matter of New York State Dept. of Transportation.*

The regulation at 8 C.F.R. § 204.12 states:

> How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?
>
> (a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:
>
> (1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and
>
> (2) The service is;
>
> (i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or
>
> (ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and
>
> (3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.
>
> (b) Is there a time limit on how long the physician has to complete the required medical service?
>
> (1) If the physician already has authorization to accept employment (other than as a J-1 exchange alien), the beneficiary physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of approval of the Form I-140.

(2) If the physician must obtain authorization to accept employment before the physician may lawfully begin working, the physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of the Service issues the necessary employment authorization document.

(c) Are there special requirements for these physicians? Petitioners requesting the national interest waiver as described in this section on behalf of a qualified alien physician, or alien physicians self-petitioning for second preference classification, must meet all eligibility requirements found in paragraphs (k)(1) through (k)(3) of § 204.5. In addition, the petitioner or self-petitioner must submit the following evidence with Form I-140 to support the request for a national interest waiver. Physicians planning to divide the practice of full-time clinical medicine between more than one underserved area must submit the following evidence for each area of intended practice.

(1)(i) If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice, or an employment commitment letter from a VA facility. The contract or letter must have been issued and dated within 6 months prior to the date the petition is filed.

(ii) If the physician will establish his or her own practice, the physician's sworn statement committing to the full-time practice of clinical medicine for the required period, and describing the steps the physician has taken or intends to actually take to establish the practice.

(2) Evidence that the physician will provide full-time clinical medical service:

(i) In a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals and in a medical specialty that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) In a facility under the jurisdiction of the Secretary of VA.

(3) A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.

(i) An attestation from a Federal agency must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the alien's work is or will be in the public interest.

(ii) An attestation from the public health department of a State, territory, or the District of Columbia must reflect that the agency has jurisdiction over the place where the alien physician intends to practice clinical medicine. If the alien physician intends to practice clinical medicine in more than one underserved area, attestations from each intended area of practice must be included.

(4) Evidence that the alien physician meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

(5) Evidence of the Service-issued waivers, if applicable, of the requirements of sections 212(e) of the Act, if the alien physician has been a J-1 nonimmigrant receiving medical training within the United States.

In a letter (dated January 12, 2004) responding to the director's request for evidence, counsel again requested "a 'National Interest' Waiver Pursuant to Section 203(b)(2)(B)(ii)" of the Act. Counsel states: [redacted] is situated in Pasco, Washington, a medically underserved area as designated by the U.S. Health and Human Services, Bureau of Primary Health Care." In an attempt to comply with the director's request for evidence, counsel also offered arguments and evidence from the petitioner addressing the guidelines for a national interest waiver as published in *Matter of New York State Department of Transportation.*

Matter of New York State Dept. of Transportation has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit of the beneficiary's work, but found that the petitioner had not established that the benefits of beneficiary's work would be national in scope or that the beneficiary would serve the national interest to substantially greater degree than would an available U.S. endocrinologist having the same minimum qualifications.

On appeal, counsel states: "Oral argument is requested on all issues due to the complexity of the legal and factual matters presented in the within appeal." The regulations provide, however, that the requesting party must adequately explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel has not specifically identified the unique factors or issues of law that cannot be adequately addressed in writing. We find that the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Counsel asserts that the beneficiary qualifies for classification under sections 203(b)(2)(B)(i) and 203(b)(2)(B)(ii) of the Act. Counsel states: "[The beneficiary] qualifies under either or both of the foregoing

In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. As has been observed in *Matter of New York State Dept. of Transportation*, a plain reading of the statute and regulations shows that aliens of exceptional ability and members of the professions holding advanced degrees are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor, by itself, does not compel CIS to grant a national interest waiver of the job offer requirement.

In seeking the additional benefit of a national interest waiver under section 203(b)(2)(B)(i) of the Act, the petitioner must provide evidence demonstrating that the beneficiary's work has significantly influenced the field of endocrinology. We acknowledge the intrinsic merit and national scope of endocrinology research. However, we do not accept the argument that this field of research is so important that any alien qualified to work in this field must also qualify for a national interest waiver. [redacted]bservations are not adequate to show that researchers outside of the beneficiary's circle of colleagues have, thus far, regarded the beneficiary's work as having a nationally significant impact.

[redacted] further states:

> It is the intention of [redacted] to continue to fund [the beneficiary's] research from funds that are available a[redacted]d from funds that [redacted] seeks in connection with a highly-specialized U.S. Government Grant for research in the academic field of Endocrinology. [The beneficiary] will continue to be involved in studying the prevalence and incidence of non-insulin dependent diabetes that impact the lives of millions of Americans. In addition, [the beneficiary] will continue to be fully responsible for guiding a group of exceptional medical research professionals who shall continue to be establishing and/or performing assays to evaluate blood glucose levels, impaired glucose tolerance, diagnostic criteria for diabetes, screening, methods, and frequency for diabetes, and insulin resistance and secondary B-cell failure.
>
> [The beneficiary's] duties shall continue to include, but not be limited to, assistance with establishing and performing endocrine assays to evaluate endocrine aspects of diabetes mellitus. His continued position as an Endocrinologist will also continue to require establishing and/or performing assays to evaluate the risk factors for non-insulin dependant diabetes which influence the risk of disease occurrence but, in most cases, are not casual factors. The position continues to require a professional candidate with an M.D. degree in endocrinology and/or internal medicine. In addition, the candidate should have a minimum of two to three years' relevant endocrine experience including, but not limited to, treating diabetic patients; methods for screening and determining the type of diabetes mellitus; familiarity with endocrine assays. Most importantly, the candidate must be an individual with a significant level of research experience and must be an individual with exceptional abilities in Endocrinology and Endocrine Research paradigms.

We note here that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.

[redacted]sserts that the beneficiary "is the author of numerous highly-specialized and original scholarly articles in the endocrinology field." Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of the beneficiary's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has provided no printouts from citation indices, nor copies of articles that cite the beneficiary's work, to show that his publications have attracted an unusual level of attention in the endocrinology field.

The record includes evidence of the beneficiary's professional memberships, his medical licenses, and a November 12, 2003 letter from his employer informing him that he was among 15 employees "nominated" by his peers for a monthly employee acknowledgement award (November 2003). We note, however, that professional memberships, recognition by one's employer, and licenses relate to the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. In regard to the beneficiary's nomination for a monthly employee acknowledgement award, we do not find that such recognition is adequate to show that the beneficiary's work is viewed throughout the greater endocrinology field as nationally significant. We further note that this nomination came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing; new circumstances cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The record also includes evidence showing that the beneficiary has presented his work at various scientific conferences. Participation in scientific conferences and symposia, however, is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification process. The record contains no evidence showing that the beneficiary's conference presentations commanded an unusual level of interest in comparison to other conference participants.

The petitioner also submitted evidence showing that the beneficiary and his colleagues were named on two grant applications submitted [redacted] to the March of Dimes and HHS in 2003. The record, however, contains no evidence showing that the grant applications were ultimately approved or that either of these organizations views the beneficiary's work as particularly important when compared to that of others in his field. The argument that participating in a project which may or may not be awarded funding by the March of Dimes or HHS elevates the beneficiary above other researchers is flawed in that it applies equally to all researchers who solicit funding for their medical studies.

[redacted] states: "[The beneficiary's] prospective duties a[redacted]vill serve the local State of Washington area and suppor[redacted]aim and goals by endowing the organization with a sophisticated and technical knowledge of endocrine research." *Matter of New York State Dept. of Transportation* indicates that while education and pro bono legal services are in the national interest, the impact of an individual teacher or lawyer would be so attenuated at the national level as to be negligible. *Id.* at 217, note 3. We find such reasoning applicable to the beneficiary's treatment of patients at [redacted]as well. In that regard, the beneficiary's impact would generally be limited to the patients that he directly serves.

On appeal, counsel repeats arguments about the overall importance of the beneficiary's work, but he does not explain how the beneficiary's research findings are of greater benefit than those of others in his field. Counsel argues that because the U.S. requires trained physicians with expertise in diabetes research, the beneficiary serves the national interest by virtue of possessing the required medical training, qualifications, and skills. Such training, qualifications, and skills, however, are amenable to the labor certification process.

Counsel further states:

> [The beneficiary] will be serving in a medically underserved area as a Primary Care Medical Professional at the present time and, in the future (assuming approval of the within petition and application request), he will fill a need for a shortage of highly-talented Endocrinologists which have caused, and will continue cause [sic], a national hardship to the area and scientific advancement of Diabetes at both a national and an international level.

Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

If practicing medicine in an underserved area was sufficient grounds for a national interest waiver under *Matter of New York State Dept. of Transportation*, then the subsequent statute creating section 203(b)(2)(B)(ii) of the Act had no purpose or meaningful effect. The creation of section 203(b)(2)(B)(ii) of the Act demonstrates Congress' willingness to grant blanket waivers for physicians in a medically underserved area or VA facility. With regard to Congressional intent, the statute that created the national interest waiver originally limited the waiver to aliens of exceptional ability. The technical amendment that made the waiver available to advanced degree professionals did not single out physicians or members of any other profession for special consideration. Given this legislative history, there is no support for the claim that Congress had, all along, intended the national interest waiver as a means of providing immigration benefits

for physicians in underserved areas. The only relevant statutory language that allows for special consideration for physicians in underserved areas is section 203(b)(2)(B)(ii) of the Act.

In regard to the beneficiary's eligibility under section 203(b)(2)(B)(i) of the Act, we concur with the director's finding that "[t]he evidence does not establish that an exemption from the job offer requirement presents national benefit so great as to outweigh the national interest inherent in the labor certification process." In this case, the record amply establishes the overall importance of the beneficiary's research. The available evidence, however, includes no independent support for the assertion that the beneficiary's specific contributions in endocrinology have outweighed those of other researchers in the specialty. It is not sufficient for the petitioner and counsel to simply describe the work undertaken by the beneficiary and then to state that it has had an impact. Instead, the petitioner must demonstrate that that the beneficiary's individual contribution has had a disproportionately greater effect as compared with the efforts of other researchers in the endocrinology field. On the basis of the evidence submitted, the petitioner has not established that the beneficiary qualifies for a waiver of the requirement of an approved labor certification pursuant to section 203(b)(2)(B)(i) of the Act.

Absent evidence showing a past record of significant influence in his field, section 203(b)(2)(B)(ii) of the Act is the only means through which an alien physician working in a shortage area may obtain a national interest waiver. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *See Mountain States Tel. & Tel. v. Pueblo of Santa Ana* at 249 and *Sutton v. United States* at 1295. To hold otherwise would be to render the blanket waiver under section 203(b)(2)(B)(ii) of the Act superfluous.

In addressing the beneficiary's eligibility under section 203(b)(2)(B)(ii) of the Act, the director's decision stated:

> The petitioner presents information and various documents related to the Nursing Relief for Disadvantaged Areas Act of 1999 (Public Law 106-95). However, the petitioner's purpose in submitting this material is unclear because the petitioner is not petitioning under that section of law with a qualifying offer of employment, and the beneficiary has not undertaken contractual obligations required by law. The petition will therefore not be adjudicated under special rules promulgated to implement Public Law 106-95.

This portion of the director's decision is withdrawn from the record. As a result of the Nursing Relief for Disadvantaged Areas Act of 1999 (Public Law 106-95), the Immigration and Nationality Act was amended to include section 203(b)(2)(B)(ii). At the time of filing and again in response to the director's request for evidence, the petitioner specifically requested "a 'National Interest' Waiver Pursuant to Section 203(b)(2)(B)(ii)" of the Act. The director's observation that the petitioner "is not petitioning under that section of law" is incorrect. While we agree with the director that the evidence submitted at the time of filing and in response to the request for evidence did not include a qualifying contractual agreement as set forth at 8 C.F.R. § 204.12 (i.e., a contract or letter issued and dated within 6 months prior to the date the petition was filed establishing that the beneficiary agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including his time served in J-1 nonimmigrant status)), the director should have requested such evidence pursuant to 8 C.F.R. § 103.2(b)(8). We note here that the January 16, 2004 "Contract for Medical Services" presented on appeal does not fulfill the requirements set forth at 8 C.F.R. § 204.12.

The record contains additional deficiencies regarding the beneficiary's eligibility for the physician waiver under the regulations at 8 C.F.R. § 204.12. For example, while we accept that the beneficiary is employed in a Primary Care Health Professional Shortage Area, the petitioner has not established that the beneficiary's medical specialty, endocrinology, is within the scope of the HHS Secretary's designation for this geographical area as required by 8 C.F.R. § 204.12(c)(2)(i). We note that, according to the Form I-140 petition, Form ETA-750B, and the letters from [redacted] the petitioner seeks to employ the beneficiary as an "Endocrinologist" rather than as a "primary care physician." It was not until the appellate stage of this proceeding that counsel began utilizing the term "Primary Care Physician" to describe the beneficiary's position [redacted] Also at issue is the amount of time that the petitioner intends for the beneficiary to spend on "endocrinology research" versus his time spent as a "primary care physician." The regulation at 8 C.F.R. § 204.12(a)(1) requires the beneficiary to agree "to work full-time (40 hours per week) in a clinical practice." The letter from [redacted] stated that the beneficiary had been "offered an employment position as an Endocrinologist on a permanent and full-time basis" and that the beneficiary would spend a significant amount of his time conducting research related to diabetes mellitus. In a letter responding to the director's request for evidence, counsel stated:

> [redacted] petitions the USCIS, on behalf of [the beneficiary] for permission to join [redacted] team of exceptional medical doctors. [The beneficiary] will clearly serve the national interest for several reasons, including but not limited to the fact that he will be utilizing the development of highly specialized endocrine research paradigms in the academic, medical, and scientific field of Endocrinology, with specific research emphasis in the areas of Non-Insulin Dependent Diabetes Mellitus and Hemiparesis in patients with Thyroid Carcinoma Metastic to the Brain after Recombinant Thyrotropin (rhTSH).

Earlier claims regarding the beneficiary's "employment position as an Endocrinologist" conflict with counsel's observation on appeal that: "[The beneficiary] continues to practice medicine as a Primary Care Physician pursuant to the terms of his agreement with that organization and shall undertake to continue to provide primary care medical services pursuant to the terms of his agreement." We note that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In conclusion, the director did not evaluate this petition under section 203(b)(2)(B)(ii) of the Act, which was the specific request of the petitioner. The director should now consider this petition and its accompanying evidence under section 203(b)(2)(B)(ii) of the Act. Therefore, this matter will be remanded. The director should properly examine the evidence of record as it relates to regulatory requirements at 8 C.F.R. § 204.12 and issue a request for evidence informing the petitioner of specific deficiencies in the record. The director may request any additional evidence deemed warranted and should allow the petitioner the opportunity to provide such evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.